

STATE OF NEW YORK SUPREME COURT
COUNTY OF OSWEGO

JANE DOE, an Individual Proceeding Anonymously
Pursuant to N.Y. Human Rights Law §50-b,

Plaintiff designates Oswego
County as the place of trial.

Plaintiff,

-vs-

SUMMONS

THE PHOENIX CENTRAL SCHOOL DISTRICT
and JOHN DOE(S) 1-10, Individually and
In their Official Capacities,

Child Victim's Act Proceeding
22 NYCRR 202.72

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney(s) within **twenty (20)** days after the service of this summons exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in this complaint.

Dated: October 8, 2019

WILLIAMS & RUDDEROW, PLLC

By:


Michelle Rudderow
Attorneys for Plaintiff

250 Harrison Street, Suite 302
Syracuse, New York 13202
Tel (315) 472-7250

Defendants' Addresses:

Phoenix Central School District
116 Volney Street
Phoenix, New York 13135

JOHN DOE(S) 1-10
Phoenix Central School District
116 Volney Street
Phoenix, New York 13135

STATE OF NEW YORK SUPREME COURT
COUNTY OF OSWEGO

JANE DOE, an Individual Proceeding Anonymously
Pursuant to N.Y. Human Rights Law §50-b,

Plaintiff,

COMPLAINT

-vs-

THE PHOENIX CENTRAL SCHOOL DISTRICT
and JOHN DOE(S) 1-10, Individually and
In their Official Capacities,

Child Victim's Act Proceeding
22 NYCRR 202.72

Defendants.

The Plaintiff, Jane Doe, an Individual Proceeding Anonymously Pursuant to N.Y. Human Rights Law §50-b, by and through her attorneys Williams & Rudderow, PLLC, as and for her Complaint against the Phoenix Central School District and John Doe(s) 1-10, allege as follows:

1. The Plaintiff, Jane Doe, is a resident of New York State, with an address to be disclosed under separate cover so that Jane Doe may afford herself the protections provided in New York Civil Rights Law §50-b.
2. The Defendant, Phoenix Central School District, is organized and existing under the laws of New York State and has an address located at 116 Volney Street, Phoenix, New York 13135.
3. Plaintiff is unaware of any additional true names and/or capacities of John Doe(s) 1-10, and therefore commences action with the use of the fictitious name(s).
4. That at all times hereinafter mentioned, the Plaintiff Jane Doe, was a student attending the Phoenix Central School District during the 1973 through 1976 school years and specifically attended the Emerson J. Dillon Middle School.

5. That at all times hereinafter mentioned, James Middaugh and Gerard Frare, were agents, servants, and/or employees of the Phoenix Central School District.

6. Upon information and belief, at all times hereinafter mentioned, the Defendants were agents and/or employees of each other and at all times were acting within the scope of such agency, service, or employment.

7. Based on the Defendants' wrongful conduct, the Defendants and its agents, servants, and/or employees acted in concert, knowingly, and with reckless disregard by abusing and/or permitting the abuse of a child, specifically the Plaintiff, to continue and chose to protect its reputation over the child(ren), and specifically the Plaintiff, to whom they owed a duty to protect.

8. In the event there are multiple tortfeasors, this action falls within one of the enumerated exceptions to Article 16, specifically NY CPLR §§1602(7) and (11).

9. This Complaint is filed pursuant to the Child Victims Act (CVA), 2019 Sess. Law News of N.Y. Ch. 11 (S.2440), 22 NYCRR 202.72, and NY CPLR §214-g.

FACTUAL ALLEGATIONS

10. Plaintiff restates and realleges those allegations set forth in paragraphs 1 through 9 as though fully set forth herein.

11. During the school years of 1973-1976, Plaintiff Jane Doe was a student at Emerson J. Dillon Middle School in the 8th grade and then the John C. Birdlebough High School in the 9th and 10th grade.

12. During these school years, the Plaintiff exhibited exemplary grades and took part in numerous social and/or extracurricular activities.

13. Also during these school years, the Plaintiff was an emotionally vulnerable minor who was experiencing a period of great difficulty.

14. Upon information and belief, during the 1973-1974 school year, and specifically beginning in September of 1973, James Middaugh began to show an interest in the Plaintiff that developed into an inappropriate and sexually abusive and/or assaultive relationship.

15. During the 1973-1974 school years and while the Plaintiff was a student of James Middaugh at the Emerson J. Dillon Middle School, James Middaugh began to groom the Plaintiff while on school property in that he requested that the Plaintiff become an assistant for the basketball team that he coached, asked Plaintiff to babysit his child, took the Plaintiff to concerts during the school year, provided rides to the Plaintiff from school in his vehicle, walked with Plaintiff past the main office to his car parked on school grounds and then drove the Plaintiff off of school grounds with the Plaintiff in his vehicle, provided the Plaintiff with gifts and cards while on school property, advised the Plaintiff that he loved her and wanted to marry her, put his arm around the Plaintiff in the school hallway during passing between classes and made statements such as, “[i]f it feels good, do it!”, repeatedly asked the Plaintiff to stay on school grounds after dismissal to assist Middaugh with various menial tasks, and acted in other inappropriate ways toward the Plaintiff while on school property.

16. Upon information and belief, the aforementioned gave way to sexual assault, intimidation, molestation, rape, abuse, distress and/or harassment of the Plaintiff by James Middaugh.

17. Upon information and belief, students of the Defendant, Phoenix Central School District, noticed and openly communicated the inappropriate, egregious, criminal, willful, wanton, and reckless conduct of James Middaugh toward the Plaintiff.

18. Upon further information and belief, the Defendant Phoenix Central School District did or should have also noticed and communicated with regard to the inappropriate, egregious, criminal, willful, wanton, and reckless conduct of James Middaugh toward the Plaintiff.

19. That the aforementioned conduct of James Middaugh continued throughout the summer preceding the 1974-1975 school year.

20. Upon information and belief, the Plaintiff began to attend John C. Birdlebough High School during the 1974-1975 school year. Upon further information and belief, James Middaugh asked the Plaintiff to visit him at Emerson J. Dillon Middle School during a time when the Plaintiff was not a student of James Middaugh nor did she attend the Middle School.

21. Upon information and belief, employees, teachers, and administrators witnessed the Plaintiff visiting with James Middaugh at the Middle School during this time.

22. Upon information and belief, and during this same time period, the Plaintiff was suffering from unforeseeable life events that left her in an even more vulnerable emotional state which emboldened and escalated James Middaugh's aggressive behavior toward the Plaintiff.

23. During the 1974-1975 school year, James Middaugh's inappropriate and harassing conduct escalated to a point where he did ultimately violently rape Jane Doe on two occasions.

24. Upon information and belief, the Plaintiff discovered that James Middaugh found additional victims who, upon information and belief, were also students at the Defendant Phoenix Central School District. Upon further information and belief, it was sometime after the new victims were found that the sexual assault, abuse, intimidation, molestation, rape, and/or harassment of the Plaintiff by James Middaugh ceased.

25. However, the sexual assault, abuse, intimidation, molestation, and/or harassment of the Plaintiff did not cease while a student at the Defendant, Phoenix Central School District. In fact, it continued with another agent, servant, and/or employee of the Defendant.

26. Upon information and belief, during the 1975-1976 school year, the Plaintiff continued to be sexually assaulted, abused, intimidated, molested, and/or harassed by a different teacher employed by the Defendant, Phoenix Central School District, Gerard Frare.

27. Upon information and belief, Gerard Frare, while a teacher with the Defendant Phoenix Central School District also chose the Plaintiff to assist him with a team he was coaching so that he could be afforded more one on one time with the Plaintiff in spite of the fact she was a minor and a student.

28. Upon further information and belief, on one occasion after a school event, Gerard Frare took the Plaintiff to a restaurant and/or bar where alcohol was being served and even attempted to provide alcohol to the Plaintiff. While at the restaurant and/or bar another teacher employed by the Phoenix Central School District was present.

29. Upon further information and belief, Gerard Frare, while a teacher employed by the Phoenix Central School District and during the 1975-1976 school year, took the Plaintiff to a party held by another teacher employed by the Phoenix Central School District where numerous teachers were in attendance, took the Plaintiff to the home of another teacher employed by the Phoenix Central School District, supplied marijuana numerous times to the Plaintiff with at least one of those times being on a school trip on a Phoenix Central School District bus for a sporting event, took the Plaintiff out in public to concerts, and acted in other inappropriate ways in breach of his duty to the Plaintiff.

30. Upon further information and belief, Plaintiff was informed that a teacher employed by the Phoenix Central School District advised Gerard Frare to never bring Plaintiff to the other teacher's home again.

31. Upon information and belief, the aforementioned gave way to sexual assault, intimidation, molestation, abuse, and/or harassment of the Plaintiff by Gerard Frare.

32. Upon further information and belief, the Defendant Phoenix Central School District and/or its employees, agents, and/or servants did or should have also noticed and communicated with regard the inappropriate, egregious, criminal, willful, wanton, and reckless conduct of James Middaugh and Gerard Frare toward the Plaintiff.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT
PHOENIX CENTRAL SCHOOL DISTRICT (NEGLIGENCE),
PLAINTIFF ALLEGES AS FOLLOWS:**

33. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 32 as though fully set forth herein.

34. Upon information and belief, the Phoenix Central School District Defendant was negligent in failing to adequately supervise infant students within its charge, specifically Jane Doe herein, and for whom Defendant was acting *in loco parentis*.

35. That the Defendant, Phoenix Central School District breached its duty to the Plaintiff, Jane Doe, by failing to supervise its employees and/or students with the same degree of care and control as a reasonably prudent parent would exercise under the same circumstances.

36. That the actions of the aggressor agents, servants, and/or employees were foreseeable, or should have been foreseeable, to the Defendant, thus creating an unqualified and mandatory duty to supervise activities of students in its charge, and specifically Jane Doe herein.

37. Upon information and belief, the aforementioned breach of supervision and duty of care is magnified by the fact that the defendant school district had actual and/or constructive notice and/or knowledge of the propensities and proclivities of the aggressor agents, servants, and/or employees also under Defendant's supervision.

38. Upon information and belief, the Phoenix Central School District Defendant (along with James Middaugh, Gerard Frare, and John Doe(s) 1-10, in their Official Capacity and Individually) negligently and inadequately supervised its infant students, specifically Jane Doe, consisting of but not limited to the following: failing to supervise its students; failing to follow school and/or State of New York Department of Education policies, procedures and/or rules; failing to see what was there to be seen; failing to investigate and/or act upon the actions of students and/or employees within its charge; providing sexual predators with access to children; creating an environment of unreasonable risk of harm to its students, and specifically Jane Doe; failing to investigate and/or act upon the actions of agents, servants, and/or employees within its charge; failing to act when a child within its charge is threatened by the negligence of a third party in spite of the defendants' special duty to do so; failing to train its personnel in the signs of sexual predation and how to protect children from sexual abuse and other harm; failing to notify and/or disclose to parents, and specifically the parents of Jane Doe, activities known to put their infant child at risk for personal injuries and damages; failing to take adequate precautions to protect Jane Doe from another individual known to be a risk to others; failing to notice a pattern of conduct of an agent, servant, and/or employee who was known to be (or should have been known to be) a predator and/or abusive; failing to notify authorities of the occurrences of abuse, neglect, or inappropriate conduct of a child by its agents, servants, and/or employees in spite of

being a mandatory reporter; failing to adequately screen employees in the defendants' district; and was otherwise negligent.

39. That as a direct and proximate result of the aforementioned, the Plaintiff has suffered severe emotional distress, personal injury, economic loss, and medical costs and will continue to suffer same in the future.

40. As a direct and proximate result of the aforementioned, the Plaintiff demands judgment in an amount in excess of all jurisdictional limits of all lower courts that would otherwise have jurisdiction, and costs and disbursements of this action, and for whatever and further relief this Court deems just and proper.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT PHOENIX CENTRAL SCHOOL DISTRICT (NEGLIGENT HIRING, RETENTION, TRAINING, AND SUPERVISION), PLAINTIFF ALLEGES AS FOLLOWS:

41. Plaintiff restates and realleges each and every allegation set forth in paragraphs 1 through 40 as though fully set forth herein.

42. Upon information and belief the negligence of the defendant, Phoenix Central School District, including its agents, servants, and/or employees, consisted of failing to adequately screen, interview, investigate, as well as in the retention, hiring, training, and supervision of James Middaugh and Gerard Frare, as well as others.

43. Upon information and belief, the Defendant, Phoenix Central School District, including its agents, servants, and/or employees, were negligent in the retention, training, and hiring of James Middaugh, Gerard Frare, and others in that they failed to determine the competency of said individuals; that the defendants had knowledge of facts which would cause a reasonably prudent person to investigate the employee's capacity to perform job duties and functions, but the defendants failed to investigate their employees' capacity; that the defendants

could have reasonably determined and/or anticipated that the negligent retention, training, and hiring of said individuals would be likely to result in injury to others and; the defendants failed to use reasonable care to correct, train, or remove the aforementioned employees; that the defendants failed to adequately supervise its employees and students which furnished the occasion for the sexual molestation, abuse, assault, rape, harassment, embarrassment, and battery alleged herein.

44. As a direct and proximate result of the Defendant's negligent retention, training, hiring, and supervision, the Plaintiff has suffered, and will continue to suffer, serious and severe emotional distress, personal injuries, economic loss, and medical expenses.

45. As a direct and proximate result of the aforementioned, the Plaintiff demands judgment in an amount in excess of the jurisdictional limits of all lower courts that would otherwise have jurisdiction, and costs and disbursements of this action, and for whatever and further relief this Court deems just and proper.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT
PHOENIX CENTRAL SCHOOL DISTRICT (*RESPONDEAT SUPERIOR*), PLAINTIFF
ALLEGES AS FOLLOWS:**

46. Plaintiff restates and realleges each and every allegation set forth in paragraphs 1 through 45 as though fully set forth herein.

47. Upon information and belief, the Defendant Phoenix Central School District's agents, servants, and/or employees negligently and inadequately supervised the students, specifically Jane Doe herein, which resulted in injuries to the Plaintiff.

48. That the Defendant's agents, servants, and/or employees committed these negligent and wrongful acts in the course of their duties as agent, servant, and/or employee of the Defendant, Phoenix Central School District.

49. Upon information and belief, Defendant Phoenix Central School District are vicariously liable for the negligent acts committed by its agents, servants, and/or employees in the course of the employees' duties under the doctrine of *respondeat superior*.

50. As a result of the foregoing, Plaintiff has suffered, and will continue to suffer serious and severe emotional distress, personal injuries, economic loss, and medical expenses.

51. As a direct and proximate result of the aforementioned, the Plaintiff demands judgment in an amount in excess of the jurisdictional limits of all lower courts that would otherwise have jurisdiction, and costs and disbursements of this action, and for whatever and further relief this Court deems just and proper.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT PHOENIX
CENTRAL SCHOOL DISTRICT (INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS), PLAINTIFF ALLEGES AS FOLLOWS:**

52. Plaintiff restates and realleges each and every allegation set forth in paragraphs 1 through 51 as though fully set forth herein.

53. The Defendant, Phoenix Central School District, engaged in reckless, extreme, and outrageous conduct with the intent to cause (or in the alternative with a disregard of a substantial probability of causing) emotional distress to those within its charge, and specifically to the Plaintiff, Jane Doe.

54. That the Defendant's reckless, extreme, and outrageous conduct includes but is not limited to the following: failing to supervise its students; failing to follow school and/or State of New York Department of Education policies, procedures and/or rules; failing to see what was there to be seen; failing to investigate and/or act upon the dangerous, egregious, and/or unsafe actions of students and/or employees within its charge; providing sexual predators with access to children; failing to protect children from sexual predators; creating an environment of

unreasonable risk of harm to its students, and specifically Jane Doe; failing to investigate and/or act upon the actions of agents, servants, and/or employees within its charge in spite of having knowledge (or should have had knowledge) that those within its charge were in danger; failing to act when a child within its charge is threatened by the negligence of a third party in spite of the defendants' special duty to do so; failing to train its personnel in the signs of sexual predation and how to protect children from sexual abuse and other harm; failing to notify and/or disclose to parents, and specifically the parents of Jane Doe, activities known to put their infant child at risk for personal injuries and damages; failing to take adequate precautions to protect Jane Doe from another individual known to be a risk to others; failing to notice a pattern of conduct of an agent, servant, and/or employee who was known to be (or should have been known to be) a predator and/or abusive in spite of being a mandatory reporter; noticing a pattern of an agent, servant, and/or employee indicative of violence or predation yet failing to take any action, whatsoever; failing to notify authorities of the occurrences of abuse, neglect, or inappropriate conduct of a child by its agents, servants, and/or employees; failing to adequately screen employees in the defendants' district; and acted outrageously, willfully, and wantonly.

55. That the aforementioned was a direct and proximate cause of the Plaintiff's injuries including her past and future severe emotional distress, personal injuries, economic loss, and medical expenses.

56. As a direct and proximate result of the aforementioned, the Plaintiff demands judgment in an amount in excess of the jurisdictional limits of all lower courts that would otherwise have jurisdiction, and costs and disbursements of this action, and for whatever and further relief this Court deems just and proper.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT PHOENIX
CENTRAL SCHOOL DISTRICT (NEGLIGENT INFLICTION OF EMOTIONAL
DISTRESS), PLAINTIFF ALLEGES AS FOLLOWS:**

57. Plaintiff restates and realleges each and every allegation set forth in paragraphs 1 through 56 as though fully set forth herein.

58. The Defendant, Phoenix Central School District, owed a duty to Jane Doe as a student within its charge.

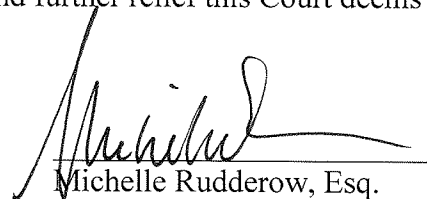
59. That the Defendant breached its duty to Jane Doe.

60. That the aforesaid breach of its duty resulted directly in severe and permanent emotional harm and distress to the Plaintiff, Jane Doe.

61. Wherefore, the Plaintiff demands judgment in an amount in excess of the jurisdictional limits of all lower courts that would otherwise have jurisdiction, and costs and disbursements of this action, and for whatever and further relief this Court deems just and proper.

WHEREFORE, the Plaintiff demands judgment in an amount in excess of the jurisdictional limits of all lower courts that would otherwise have jurisdiction, and costs and disbursements of this action, and for whatever and further relief this Court deems just and proper.

Dated: October 8, 2019



Michelle Rudderow, Esq.
WILLIAMS & RUDDEROW, PLLC
250 Harrison Street, Suite 302
Syracuse, New York 13202
Tel (315) 472-7250

TO: Phoenix Central School District
116 Volney Street
Phoenix, New York 13135

VERIFICATION


STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

Michelle Rudderow, Esq., being duly sworn, deposes and says that she is the attorney for the plaintiff in this action and that the foregoing Complaint is true to her own knowledge except as to matters therein stated on information and belief and as to those matters she believes it to be true; that the grounds of her belief as to all matters not stated upon her knowledge are correspondence and other writings furnished to her by the plaintiff and interviews with officers and employees of plaintiff; and that the reason why the verification is not made by plaintiff is that the plaintiff is not in the county where the attorney has her office.

Dated: October 8, 2019


MICHELLE RUDDEROW

Sworn to before me this 8th
day of October, 2019.


Notary Public
EMILY S. DEAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6149949
Qualified in Onondaga County
My Commission Expires 7/17/22